IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1265 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VISNAGAR NAGRIK CO-OPERATIVE BANK LTD.

Versus

GUJARAT SEMICONDUCTOR PVT.LTD.

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Appearance:

MR PK JANI for the Petitioner

MR SHIRISH JOSHI for the Respondents

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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 27/03/2002

ORAL JUDGEMENT

The petitioner is a co-operative bank, which has filed this petition as it has been aggrieved by an order dated 11.1.2001 passed below Ex. 61 in Appeal No. 111/96 by the Gujarat State Co-operative Tribunal, Ahmedabad.

2. The respondents are principal debtor and the guarantors and Lavad Case No. 252/90 (old No. 1592/96) was filed before the Board of Nominees, Mehsana, by the petitioner bank against the respondents for the purpose of recovery of Rs. 2,12,859/-. The suit was decreed on 6.3.1996. Being aggrieved by the order passed in Lavad Case No. 252/90, the respondents had filed Appeal No. 111/96 before the Gujarat State Co-operative Tribunal, Ahmedabad. The appeal is pending for final hearing. The respondents had filed an application for stay of the order passed by the Board of Nominees and the said application for stay has been granted. Thus, the petitioner has not been paid any amount in spite of the fact that the decree has been passed in favour of the petitioner bank.

3. Learned advocate Shri Jani appearing for the petitioner has submitted that normally in case of money decree, the debtor and the guarantor are asked to deposit some amount when the appeal filed against the decree is admitted, but in the instant case, the Tribunal granted stay and it did not give any direction with regard to deposit of the amount. It has been submitted by him that action of the Tribunal is in violation of the ratio laid down by this court in the judgment delivered in Special Civil Application No. 8456 of 2000. In spite of the fact that attention of the Tribunal was drawn to the judgment delivered by this court in Special Civil Application No. 8456 of 2000, no condition was imposed by the Tribunal while staying execution and implementation of the decree passed by the Board of Nominees.

4. It has been submitted by learned advocate Shri Jani that the appeal, which has been filed before the Tribunal, is not being heard. It has been also submitted by him that the appeal has not been heard because the learned advocate for the respondents appearing before the Tribunal had prayed for time on several occasions. In support thereof, he has drawn my attention to the applications for adjournments filed by the learned advocate appearing for the respondents before the Tribunal. It has been submitted by learned advocate Shri Jani that the respondents should be directed to pay the decretal amount as the decree is in the nature of money decree.

5. On the other hand, learned advocate Shri Shirish Joshi appearing for the respondents has submitted that the respondents are ready and willing to proceed further with the appeal and adjournments were sought for by the

learned advocate appearing for the petitioner before the Tribunal. He has drawn my attention to the rojkam showing the fact that the learned advocate appearing for the petitioner before the Tribunal had prayed for time on the ground that the present petition was filed before this court. He has shown his willingness of the respondents to proceed further with the appeal.

6. It is not in dispute that the appeal has been filed and it is pending since long. From what has been submitted by the learned advocates, it is clear that all the parties are keen to see that the appeal is disposed of at an early date. Looking to the facts of the case, it is directed that the respondents should deposit a sum of Rs. 1,00,000/- with the petitioner bank within a period of six weeks from today without prejudice to the contentions raised by the respondents in the appeal filed by them. The learned advocates have agreed that they would proceed further with the appeal as soon as possible and they would not pray for time unless there is a justifiable reason.

7. Looking to the readiness shown by the learned advocates to proceed further with the appeal, it is directed that the appeal pending before the Tribunal shall be heard and disposed of preferably before 31st July 2002 and if the appeal is not finally disposed of by that time, the stay granted by the Tribunal in favour of the respondents shall automatically be vacated on 31st July 2002.

8. In view of the above order, this petition is partly allowed. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

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